58

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.223 of 2003

Appellant/ Defendant	Suresh Kumar Agrawal, aged about 54 years, S/o Lat Rameshwar Lal Agrawal, R/o Mahalaxmi Industries, Gurunanak Chowk, Raipur, Tahsil & Distt. Raipur (C.G.)

versus

Respondent/ Plaintiff	Smt. Sudha Devi Sao, aged 45 years, W/o Atmaram Sao, R/o Banjari Chowk, Gol Bazar, Raipur, Tahsil & District Raipur (C.G.)

Second Appeal u/s 100 of the Code of Civil Procedure, 1908

Present : Shri Abhay Tiwari, counsel for the appellant.
Shri B.P.Sharma, counsel for the respondent.

ORAL ORDER

(Passed on 25th July, 2007)

At the very outset, Shri B.P.Sharma, learned counsel for the respondent/plaintiff submitted that he relinquishes his right of eviction of the appellant/defendant under Section 12(1)(k) of the Chhattisgarh Accommodation Control Act, 1961 (henceforth 'the Act').

(2) Heard Shri Abhay Tiwari, learned counsel for the appellant/defendant on admission.

(3) The appellant/defendant is aggrieved by the judgment and decree dated 18-02-2003 passed by the District Judge, Raipur in Civil Appeal No.5-A/2002, whereby affirming the judgment and decree

passed in Civil Suit No.117-A/1999 on 09-08-2002 by the Vth Civil Judge Class-I, Raipur granting eviction of the appellant/defendant under Section 12(1)(f) and (k) of the Act, the appeal was dismissed.

(4) Brief facts are that the respondent/plaintiff had filed Civil Suit No.117-A/1999 for eviction of the appellant/defendant – tenant on grounds of clauses (k) and (f) of sub-section (1) of Section 12 of the Act. Both the Courts below have recorded a concurrent finding of fact that the appellant/defendant had caused substantial damage to the accommodation by uprooting tiles and by closing the door from inside by constructing a wall and further that the respondent/plaintiff required the suit accommodation *bona fide* for non-residential purpose. The lower appellate Court has also recorded a specific finding that two shops sold by the respondent/plaintiff by sale-deed, Ex.D-1 and D-2 were very small in size, i.e., 138 Sq.Ft. and 198 Sq.Ft. and could not meet the requirement of the plaintiff under Section 12(1)(f) of the Act, whereas the suit accommodation was 1200 Sq.Ft. in area. Both the Courts below have also held that the respondent/plaintiff was not in possession of any other reasonably suitable non-residential accommodation of her own in her occupation in the city or town concerned.

(5) In view of the relinquishment of the right to evict the appellant/defendant on ground of Section 12(1)(k) of the Act, this second appeal is being considered only on the ground of Section 12(1)(f) of the Act, under which the decree for eviction of the appellant/defendant was passed by the trial Court and affirmed in first appeal.

(6) Shri Abhay Tiwari, learned counsel for the appellant/defendant has raised a pure question of law that in the absence of specific pleadings by the respondent/plaintiff as to how the two shops sold by her vide sale-deeds Ex.D-1 and D-2 were not suitable for carrying on business in comparison to the suit shop, eviction under Section 12(1)(f) of the Act could not be granted. Besides this sole ground, learned counsel for the appellant/defendant was unable to show any perversity in the finding recorded by both the Courts below that the ground for eviction of the tenant, i.e., the appellant/defendant under Section 12(1)(f) of the Act was proved. Shri Abhay Tiwari, learned counsel for the appellant/defendant also placed reliance on ***Ramji Bhagala*** **vs.** ***Krishnarao Karirao Bagra and another*****, (1982) 1 SCC 433.**

(7) So far as the case of ***Ramji Bhagala*** (supra) relied on by learned counsel for the appellant/defendant is concerned, in view of the relinquishment of the right to evict the tenant under Section 12(1)(k) of the Act by the learned counsel for the respondent/plaintiff at the very outset, the question of partly admitting or partly rejecting the appeal does not arise. Therefore, the case law cited has no application to the present case.

(8) Chapter III of the Act deals with control of eviction of tenants. Section 12 of the Act imposes a restriction on eviction of tenants and a suit could be filed in any Civil Court for eviction from any accommodation only on one or more of the grounds mentioned in Section 12(1) of the Act. Section 12(1)(f) of the Act reads as under :

"12. Restriction on eviction of tenants. – (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a)	xxx	xxx	xxx	xxx
(b)	xxx	xxx	xxx	xxx
(c)	xxx	xxx	xxx	xxx
(d)	xxx	xxx	xxx	xxx
(e)	xxx	xxx	xxx	xxx

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;"

(9) In order to seek eviction of the tenant, the respondent/plaintiff was required to plead that she is the owner of the accommodation and requires it *bona fide* for the purpose of continuing or starting her business and that she has no other reasonably suitable accommodation of her own in her occupation in the city or town concerned. A perusal of paragraph 4 of the plaint clearly shows that the respondent/plaintiff had pleaded as under :

> "4/ That the plaintiff requires the said premises bonafidely for starting her business of cattle feed and grain and she has no any other suitable and vacant accommodation in her possession in the City of Raipur for the same. Therefore the defendant is liable to be ejected also under Section 12(1)(f) of M.P.A.C. Act."

(10) In paragraph 1, the respondent/plaintiff had also pleaded that she is the owner and landlord of the accommodation concerned. In this manner, the sole contention advanced by learned counsel for the appellant/defendant is liable to outright rejection because the necessary ingredients for seeking eviction of the tenant on ground of Section 12(1)(f) of the Act were specifically pleaded by the respondent/plaintiff. The fact of availability of a suitable accommodation in the locality or the sale thereof by the respondent/plaintiff emerging during examination of the appellant/defendant for the first time was thus purely a matter of evidence to be adduced in rebuttal and which was not required to be pleaded by the plaintiff. The concurrent finding of fact recorded by both the Courts below that the ground for eviction under Section 12(1)(f) of the Act was proved is thus based on proper appreciation of evidence, oral as well as documentary. In my considered opinion therefore no substantial question of law arises for determination in this appeal. The appeal is accordingly dismissed at the stage of admission. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal